IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1154 OF 2004.
IN
EXECUTION APPLICATION NO.145 OF 2004

Techno Foundation. ..Claimants.

V/s.

Narendra R.Shah. ..Respondent.

And

Jitendra R. Shah. ..Applicant.

Ms.J.M.Sidhwa i/b Manoj Bhatt for applicant.

Mr.Hemant Sethi for claimants.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 21, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This application is for raising attachment in respect of the property being premises No.D-1, Ground floor, Nutan Kalpana, S.N.Road, Mulund(w), Mumbai 400 080 and for setting aside and recalling warrant of attachment.

3. According to the applicant, the suit property is owned by him. The respondent has no concern with

the said property. It is stated that the disputed premises were originally owned by father of the applicant and respondent. During the lifetime of their father, arrangement was arrived at, under which the applicant has been given the disputed premises to be enjoyed in his own rights and no other family member would have any concern with the said property. It is then contended that the applicant has been paying outgoings, in respect of the disputed premises.

4. The argument canvassed on behalf of the applicant, in my opinion, is unacceptable. In the first place, it is not in dispute that the disputed property belonged to father of the applicant and respondent Judgment debtor. After his demise, in ordinary course, the surviving family members, the brothers(sons of Ratilal Shah), would inherit the property together. To get over this, it is contended that during the life time of father, arrangement was arrived at that the disputed premises will come to the share of applicant. There is no documentary evidence to substantiate this position.

5. If it is a case of transfer, it ought to have been in writing and such document was required to be

registered. That has not been done. The share certificate in respect of the disputed premises however, continue to be in the name of the father. Merely because the applicant has paid outgoing of the disputed premises, will not give him right to claim that he is exclusive owner of the said premises, to the exclusion to the rights of his brother therein, who have also inherited the property, after the demise of their father. Something more is required to be established to substantiate that stand, which is lacking.

6. In the circumstances, I have no hesitation in taking view that the warrant of attachment issued in respect of the disputed premises is appropriate, as the respondent Judgment debtor has also right, title and interest therein. Hence, this chamber summons should fail.

7. Hence dismissed. No order as to costs.